IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1692 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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PARSHOTTAMDAS HARIBHAI PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
HL PATEL ADVOCATES for Appellant(s) : 1,
MR AJ DESAI, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 01/12/2006

ORAL JUDGMENT

1. Heard Shri D.N. Vakil, learned counsel appearing on behalf of H.L. Patel Advocates for the appellant and Shri A.J. Desai, learned Additional Public Prosecutor, appearing on

behalf of the respondent-State.

2. The present appeal is against the judgment and order of rejection of the Misc. Criminal Application no.383 of 1996, claiming muddamal articles after conclusion of the trial in Sessions Case No.97 of 1994. The said Sessions Case has been disposed of by the Sessions Court on 28th July, 1995. The learned trial Judge vide impugned order rejected the request to return the valuable muddamal recovered during the course of investigation of crime registered with Khanpur Police Station vide C.R.No.I-12 of 1993 for the offences punishable under Sections 395, 397, etc. of the Indian Penal Code. The backbone of the submissions of Shri Vakil is that the main accused who were tried by the Court of Sessions had not claimed, however, so far as the gold and silver ingots are concerned. The orig.accused nos.3 and 4 from whom the muddamal ingots were recovered by the police had claimed that the same may be handed over

to them.

3. It is not a matter of dispute that some of the accused at present are even absconding and the learned Sessions Judge while rejecting the application has observed that there is ample scope of arrest and filing of the supplementary chargesheet against the absconding accused persons and at that time, the Court may need muddamal for effective proceedings without any hurdle. The resistance of Shri A.J. Desai, learned Additional Public Prosecutor, is that the hand over of muddamal to the applicant herein is likely to prejudice the trial which may commence in the event of arrest of absconding accused.

4.1 I have considered various contentions placed before me. It is not a matter of dispute that nobody has claimed the muddamal currency notes of Rs.20,000/- and one of the articles is an ornament popularly known as 'Mangalsutra'. This ornament is being preserved and used with

utmost sensitivity by a married woman and it is considered to be a symbol of existence of husband of a woman. There is no question that the muddamal article 'Mangalsutra' belongs to the complainant and till date of disposal of the Sessions trial, nobody had claimed that article. There is no question of identity of the muddamal currency notes. It is true that the muddamal currency notes are not perishable and they can be preserved by the Court. However, considering the facts of recovery of this muddamal currency notes, it was possible for the learned Sessions Judge after conclusion of the trial and that too, one year thereafter, to hand over immediately two articles namely currency notes of Rs.20,000/- and 'Mangalsutra' to the applicant. It appears that this application remained pending for about 10 years. It is strange that such a miscellaneous proceeding remained pending for the reasons best known to the administration of the District Panchmahal at Godhra for 10 years. It is not even observed that in this period of 10

years, the police had even attempted to arrest the absconding accused or they have been arrested and the police is likely to file supplementary chargesheet against them. So keeping this totality in mind and its impact and keeping the rival claim of two accused persons, the finding of the learned Sessions Judge is absolutely in accordance with law so far as the gold and silver ingots are concerned. The learned trial Judge was legally entitled and was otherwise able to exercise discretion in favour of the applicant for other two articles claimed by the applicant i.e. currency notes of Rs.20,000/- and 'Mangalsutra' by imposing stringent conditions as if the muddamal is being handed over to the applicant in exercise of powers vested with the Court under Section 451 read with Section 452 of the Code of Criminal Procedure, 1973. When there is no question of identity of the muddamal currency notes, as emerging from record during the course of conduction of the trial, these currency notes could have been handed over to

the applicant on his furnishing a solvent surety of the similar amount and also asking the applicant to file an undertaking to the effect that he will tender the said amount in the Court in the event of commencement of the trial after arrest of the absconding accused. On similar condition, the 'Mangalsutra' also could have been handed over to the applicant and the applicant could have been asked to keep the muddamal article in the same shape and design so that the physical appearance of that ornament would remain the same.

4.2 Section 451 of the Code of Criminal Procedure, 1973, deals with the scheme of orders of custody and disposal of the property pending trial. The explanation given under Section 451 clarifies the concept 'property' so far as disposal of the property under Chapter XXXIV is concerned. Section 452 of the Code of Criminal Procedure, 1973, deals with the orders of disposal of the property at the conclusion of the trial. In the present case, it can be said

that the application for valuable muddamal i.e. property, within the meaning of Section 452 of the Code of Criminal Procedure, 1973, was preferred before the lower Court but as the absconding accused persons were not arrested, the lower Court decided the application treating the prosecution initiated by the State pending. The status of the present applicant is of a person who can be said to be aggrieved by the order passed by the lower Court under the scheme of Section 452 of the Code of Criminal Procedure, 1973. Considering the relevant date of commission of offence, conclusion of the trial against the accused arrested and chargesheeted, and the date of filing of the muddamal application, the grievance brought before this Court sounds well being rational. The cases where the muddamal is being claimed, on conclusion of the trial the Court should think and can think as to whether it is possible to part with any of the muddamal articles i.e. property, temporarily when the scope of conclusion of the second or

anticipated trial is very uncertain even after 5, 7 or 10 years. The question posed before this Court is whether the State can be indirectly permitted to enjoy the valuable property of a litigant/victim for an indefinite period or not. If the property is in the physical form, which can not be said to be perishable, the State cannot directly or indirectly sit over the valuables for an indefinite period or for all time to come merely because the State itself is not able to bring home the ultimate conclusion of the trial or the case initiated on the strength of the complaint registered. In number of cases, the currency notes are found lying in the custody of the Court for years on such or similar ground which has been brought before the Court by the present appellant. So while disposing of the application preferred under Section 452 of the Code of Criminal Procedure, 1973, keeping the scheme of Section 451 of the Code of Criminal Procedure, 1973, in mind and by preserving the privilege of the State being the

complainant, the Court should dispose of the property on conclusion of the first set of trial. Of course, everything would depend on the facts of each case and the time consumed in concluding the first set of trial and the scope of conclusion of second or anticipated trial which may take shape in future.

5. Shri A.J. Desai, learned Additional Public Prosecutor, fairly submits that this Court may impose any appropriate condition and can allow the appeal in part considering the lapse of time between the date of decision in the Sessions Case and the order under challenge.

6. In view of above observations and discussion, the present appeal is hereby partly allowed. The learned Sessions Judge, Panchmahal at Godhra is hereby directed to hand over the muddamal currency notes worth Rs.20,000/- being Article No.5 and 'Mangalsutra' being Article No.2 in question, to the applicant herein on the following conditions that :

(i) The applicant shall submit a solvent surety of Rs.10,000/- and a personal undertaking to the Court of Sessions to the effect that in the case of any order or direction in the event of arrest of the absconding accused, the currency notes worth Rs.20,000/- shall be tendered in the Court, subject to outcome of the trial, which may be initiated against the absconding accused.

(ii) The applicant shall be handed over 'Mangalsutra' on a condition that the applicant shall preserve the muddamal Article 'Mangalsutra' in the same shape, design and condition, without making any change, addition or alteration or even look of the muddamal Article.

(iii) The applicant shall also file an undertaking before the Court of Sessions to the effect that as and when ordered, he shall bring that muddamal Article before the Court for the purpose of identification, if need be in the Sessions trial which may be initiated against the absconding accused persons;

4. The finding recorded of the learned trial Judge as to the rejection of the application so far as the gold and silver ingots are concerned, is found legal and the same is hereby confirmed. However, if anybody claims the said ingots by way of filing a separate application, such an application shall be heard and decided after issuance of notice to the present applicant.

5. Before parting with the order, it is observed that these two valuable articles of muddamal i.e. gold and silver ingots, are not required

to be preserved for all time to come. Almost 21 years have passed. After reasonable period of time, the applicant can approach the learned Sessions Judge after getting the report from the District Superintendent of Police of the District about the scope and possibility of the arrest of the accused and the the learned Sessions Judge can pass appropriate orders as to disposal of the muddamal after hearing rival claims and if need be by holding inquiry as to whom these articles should be handed over. The applicant may file such an application after lapse of two years from the date of decision by the Court of Sessions in Criminal Misc. Application No.383 of 1996.

Order and direction accordingly.

Direct Service is permitted.

(C.K. Buch, J)

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